

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

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BEFORE THE HONORABLE GARLAND E. BURRELL, JR., CHIEF JUDGE

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LYNN NOYES,

Plaintiff.

vs.

No. Civ. S-02-2685

KELLY SERVICES, INC.,

Defendant.

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REPORTER'S TRANSCRIPT

HEARING

MONDAY, JUNE 16, 2008

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Reported by: KIMBERLY M. BENNETT, CSR #8953

RPR, CRR, RMR

APPEARANCES

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1 SACRAMENTO, CALIFORNIA

2 MONDAY, JUNE 16, 2008

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4 THE CLERK: Calling 02-2685; Noyes versus Kelly
5 Services.

6 MS. JONES: Catherine Jones on behalf of the
7 plaintiff. And I'm not sure if Robert Burch is on the line.
8 No?

9 THE COURT: He's not on the line. Something is wrong
10 with the telephone system. My courtroom deputy has tried to
11 reach the person in IT who could perhaps remedy the problem,
12 but at this point it's not remedied.

13 MS. JONES: Okay. I think he would be more likely to
14 talk on the attorney's fees motion anyway.

15 THE COURT: Okay.

16 MR. CONNAUGHTON: Good morning, Your Honor. Joe
17 Connaughton on behalf of defendant.

18 THE COURT: This is on calendar for oral argument.
19 You can argue.

20 MR. CONNAUGHTON: Thank you, Your Honor. Would you
21 prefer that I use the podium or stay at the table?

22 THE COURT: The podium, because you're not using the
23 microphone at the table and it's going to be very difficult.
24 You may have been using it, but you weren't using it
25 effectively.

1 MR. CONNAUGHTON: Thanks, Your Honor.

2 Good morning. I will first address the punitive
3 damages issue raised by Your Honor in Your Honor's order of
4 the other day regarding whether or not there was a managing
5 agent sufficient for punitive damages to exist.

6 The crux of this issue goes back to California Civil
7 Code Section 3294. 3294 says that there are two situations,
8 and two situations only, when punitive damages are
9 appropriate against a California employer. Those are:

10 Number one, if an officer, director, or managing agent
11 acts with malice, oppression, or fraud. That is not an issue
12 here. Plaintiff has conceded she is not proceeding under
13 that theory. So all we have left is the second prong of
14 3294.

15 The second prong of 3294 requires that an officer,
16 director, or managing agent ratify or approve the despicable
17 conduct, the malicious, oppressive, fraudulent conduct,
18 otherwise engaged in by some other employee. That's what
19 this entire issue is about.

20 Two issues on that, Your Honor:

21 Number one, I think it would be appropriate for Your
22 Honor to make a ruling that, in fact, there was insufficient
23 despicable conduct by anybody. And I'd ask that -- there is
24 a semi new issue that came up as I was reviewing plaintiff's
25 reply briefs that I wish to raise, and that is even the

1 United States Supreme Court has now recognized that there are
2 certain cases, even intentional discrimination cases, where
3 punitive damages are inappropriate. And I would suggest that
4 this is exactly one of those cases.

5 The case is Kolstad versus American Dental
6 Association. I think it's a 1999 Supreme Court case. And if
7 Your Honor needs a cite, it's 527 US 526.

8 The issue there, what the Supreme Court says, is that
9 if the person making the decision doesn't realize that
10 they're breaking the law, there should be no punitive
11 damages, even if, in fact, they are. And that's exactly what
12 we had here with Mr. Heinz, who testified, nope, he didn't
13 think this was a religion. If anything what we have is
14 associational discrimination, but he didn't see it as a
15 religion. The other people testified they didn't know it was
16 a religion. So, perhaps this is exactly that narrow type of
17 case described in Kolstad.

18 In addition, the other interesting thing that Kolstad
19 says is that punitive damages may not be appropriate in a
20 case where there is a novel theory of law. And I think we
21 can all argue whether or not this particular theory, this
22 reverse religious discrimination, is difficult or not, but
23 it's certainly novel. The Ninth Circuit opinion was the
24 first case, at least that we saw, to actually authorize it
25 when it reversed the original summary judgment.

1 So it is not a stretch to not only either rely upon
2 the fact that perhaps this was associational discrimination;
3 the person making the decision didn't realize he knew what he
4 was doing was wrong. Or, this is a new theory, and we're not
5 going to allow this massive, enormous punitive damages award
6 on this narrow, new, novel theory of law. So that's number
7 one. It would be easy to say there really was no despicable
8 conduct by anyone, but let's get to the more, I think, direct
9 issue.

10 For there to be ratification or authorization, it
11 requires evidence, clear and convincing evidence, that the
12 managing agent intended to adopt or approve whatever that
13 despicable conduct was; adopt or approve that malicious,
14 fraudulent conduct. There are two key cases on that point.
15 One is College Hospital versus Superior Court, the other is
16 Cruz versus Home Base. They're both cited in our briefs.

17 Here there is only one managing agent. Just one.
18 That was Ms. Ramsey. Everyone else who testified, or about
19 whom there was evidence, was a human resources generalist, or
20 someone upon whom there was absolutely no evidence that they
21 could have affected corporate policy. So, starting with that
22 point, we've got this one person.

23 So the question is, is there clear and convincing
24 evidence that Ms. Ramsey took action to approve, ratify, the
25 one decision that was at issue here, this failure to promote.

1 And the evidence, Your Honor, showed she didn't even know
2 about it until after. She didn't know the decision had been
3 made regarding Ms. Noyes until after it occurred. So, she
4 certainly didn't have prior knowledge, as would otherwise be
5 required. And then after she knew, what was the admissible
6 evidence about what Ms. Ramsey did, our only managing agent?
7 She required an investigation to be done. She helped put in
8 place remedial measures. And then they waited, once the DFEH
9 ruled, and they got that ruling that supported the actions
10 that they had taken. That is it. There is no action on her
11 part that showed she had any intent to approve, ratify,
12 authorize anything that Mr. Heinz had done. And I would
13 suggest that, by itself, leaving aside the Kolstad issues,
14 leaving aside everything else, is enough to require the
15 punitive damages issue to be taken away.

16 In addition, Your Honor, this Court also concluded,
17 when it went through its mixed motive analysis, and I'll
18 leave that issue for some other time, that there must have
19 been sufficient evidence for there to have been a good motive
20 for Lynn Noyes not to have been selected, otherwise Your
21 Honor couldn't have given that mixed motive instruction.
22 There had to have been sufficient evidence to say, yes, they
23 could have done this for a fair reason. That additionally
24 shows the lack of despicable conduct on behalf of anybody.

25 I will leave additional comments, if Your Honor wishes

1 them, for after Ms. Jones makes her comments.

2 But upon that one issue, on managing agent, I'd ask
3 Your Honor to re-review that Cruz case, and the College
4 Hospital case, and White versus Ultramar, because California
5 law is pretty specific.

6 Federal law is easy because we've got that 300,000
7 cap. We're 20 times over that. This jury went 20 times over
8 what the federal law would require. And California law has
9 similarly protective measures, and they go at this managing
10 agent, officer, director issue.

11 Okay. Let me hit the second issue, if only briefly,
12 on the constitutionality of the amount.

13 State Farm, and Gore, and the State Supreme Court case
14 Simon all stand for the same thing, more or less; that you
15 look at reprehensibility, look at these other factors, and
16 then at the end of the day, if the compensatory award is
17 already substantial, we have to be very careful with any
18 punitive award. So, if the compensatory award looks like it
19 includes punitive amounts, anything more than one time the
20 amount would be getting past our due process limits. If it
21 has -- and I think the word in State Farm is substantial,
22 they say anything more than one or two or four times would be
23 too much.

24 Here, let us not lose sight of the amount of this
25 award. Ms. Noyes when she left her employment made \$57,000 a

1 year. The economic award here was about three times, she had
2 three years of pay in just economics, for a job that everyone
3 conceded at trial she would have lost shortly thereafter
4 because the whole place got shut down. So we've got three
5 years of economics. And then on top of that we've got the
6 \$500,000 emotional distress award, which was based upon
7 Ms. Noyes's testimony that she may have seen a doctor a few
8 times, she might have gotten Xanax, and some other things,
9 but no history of treatment, no disability, nothing like
10 that, and she got an additional ten years of pay, nearly, for
11 that.

12 I would suggest, Your Honor, that is as clear evidence
13 from the jury of a punitive or quasi-punitive award as there
14 could be. And given that there is this substantial emotional
15 distress award, on top of this substantial economic award,
16 neither of which appear to be justified from the testimony
17 given from the stand, but so be it, the award of the punitive
18 damages being nine times is far beyond that which is
19 constitutionally permissible under State Farm, under Gore,
20 and under Simon.

21 Thank you, Your Honor. I'll reserve my other comments
22 for rebuttal, if I may.

23 THE COURT: Okay.

24 MR. CONNAUGHTON: Thank you.

25 MS. JONES: Good morning. On the managing agent

1 issue, I have reviewed those cases, of course. The White
2 versus Ultramar case is the main case cited by the defense.

3 In that case the court -- it was a California Supreme
4 Court case where the court looked at the two ways of
5 evaluating a managing agent. On the one side there were
6 courts of appeal saying that all it had to be was someone who
7 hired and fired that had the authority to do that. And the
8 White court said, no, that's not enough, we need more, we
9 need to have someone higher up in the corporate hierarchy who
10 actually can establish policies.

11 In White versus Ultramar, the Court also discussed and
12 approved of the Kelly Zurian versus Wohl case, which I don't
13 believe was cited by either side; that's 22 Cal.App. 4th 397.
14 That case, the local boss was found not to be a managing
15 agent because he wasn't high enough in the corporation. And
16 in that case the court specifically noted that the authority
17 to establish corporate policies rested in Saint-Louis, which
18 was the out-of-state corporate office. That's exactly what
19 we have here. The authority to make those policy decisions
20 rests in Troy, Michigan, where corporate headquarters is
21 located.

22 We're not seeking to pin our punitive damage award on
23 simply Ms. Ramsey, it's the corporation, through its
24 officers, directors, or managing agents, during the whole
25 period where the discrimination was allowed to take hold in

1 the Nevada City office. And here it was Troy that had that
2 authority. We've identified five corporate officers. And I
3 don't believe that it's plaintiff's problem that there was
4 such a high turnover at the corporation where they would have
5 one person doing an investigation, Theresa Dolbert in '99,
6 with Tarek Brantley, who were no longer employed and out of
7 the subpoena power by the time this case came to trial, and
8 even in 2001 they were no longer involved in the Nevada City
9 operation.

10 The Supreme Court in White held that you do need more
11 than just the hire and fire. So we have that here. We
12 have -- in White it was just a district manager who reported
13 to department heads who managed eight stores and 65
14 employees, and they found her to be a managing agent under
15 Civil Code 3294 so as to authorize an award of punitive
16 damages.

17 We're going beyond that. We have people who are
18 vice -- corporate vice presidents, such as Ms. Dolbert back
19 in Michigan.

20 The Cruz versus Home Base case, that one was another
21 one cited by defense for -- let's see, in that case a patron
22 was accused of stealing plywood by a security guard at Home
23 Base. And the person they were seeking to pin the punitive
24 damages on in that matter was the manager of security of that
25 store, and there was insufficient evidence in that case for

1 ratification for the punitive damage award. Clearly our case
2 has a different level of ratification.

3 College Hospital --

4 THE COURT: What's the evidence of the ratification or
5 approval here?

6 MS. JONES: Well, starting back in 1999, when the
7 letter was sent to David Beckstrand at the corporate office
8 to advise that there was some discrimination based on
9 religion. After '99, when the corporate did the
10 investigation, they -- I believe they knew, or should have
11 known, that something was wrong in Nevada City, and they
12 failed to take steps to stop what William Heinz was doing
13 until it was too late, and they ended up closing the shop
14 completely.

15 They failed to -- let's see, so your question is
16 what's the evidence of the corporate ratification and
17 authorization of the acts?

18 THE COURT: Yes. Ratification or approval.

19 MS. JONES: Or approval. So that would have been
20 though any one of the corporate officers. Theresa Dolbert
21 was a corporate vice president who was Mr. Heinz's boss, she
22 was the woman who came out in 1999. Although she did not
23 testify at trial, we had evidence concerning that
24 investigation where people said, yes, I spoke with her, and
25 there was supposed to be a result given to us, and that was

1 never done. So Theresa Dolbert is probably the highest
2 ranking corporate officer who was aware of the situation.

3 Nina Ramsey, of course, is the senior vice president
4 for human resources. Although Kelly is claiming that people
5 like Darrah Bixler, who did testify, and Tarek Brantley, as
6 human resources generalists, were not sufficiently high
7 ranking enough, I believe under the cases cited by defense,
8 Cruz, College Hospital, White, the Kelly Zurian case, that
9 that's enough. My client waited until the month after the
10 promotion, until Darrah Bixler was coming out to Nevada City,
11 to tell her what was going on. This is the corporate
12 representative from headquarters coming out to discuss it.

13 Even though Nina Ramsey may not have been aware of the
14 situation until my client told her, even at that time when my
15 client told her there hadn't been a DFEH filing, there hadn't
16 been a lawsuit filed, the complaint was made, the situation
17 could have been taken care of, and it was not. And there was
18 testimony on that issue at the trial.

19 The letter written in 1999 was to human resources as
20 well as corporate headquarters. And I think when you really
21 examine these cases, you find that they're not really looking
22 for some higher level -- higher standard of corporate
23 managing agent ability to influence corporate policies. I
24 mean, in that -- the White case there was simply a store
25 manager of eight stores and 65 employees who was a managing

1 agent because that person had the ability to direct corporate
2 policy right within each of those stores, a lot of authority
3 was delegated to that person.

4 We, I believe, have shown that there were sufficiently
5 high-level corporate decision makers involved in the decision
6 to not promote my client in April of 2001. I mean, that's
7 kind of the easy answer, that Kelly approved the promotion of
8 Joep Jilesen. That was approval, that was corporate
9 approval. And that they knew at that point, or should have
10 known, certainly, that there was discrimination going on.

11 We presented all of the evidence that this Court has
12 heard on the issues that were going on, and how the -- Kelly
13 corporate failed to take effective action to stop it. And
14 that's exactly what the jury picked up on. What it was was I
15 think going back to that time. But, as well, my client had
16 tried to resolve the problem before filing a lawsuit, and
17 Nina Ramsey became aware of it then. And, again, we don't
18 have control over whether or not corporate has a file that
19 goes from one person to another as the person holding that
20 job changes. And I think there was a real lack of follow
21 through. Darrah Bixler testified -- well, I'll strike that.

22 So, they had -- Kelly corporate's involvement was
23 pretty extensive in our opinion. Even if they didn't know --
24 if they denied and put blinders on to the fact of religious
25 discrimination, they really should have given all the facts

1 and all the evidence that we presented, and what they knew,
2 and what they had been told, and how they had been made aware
3 of it through the exit interviews, through the letters,
4 through their own investigation in 1999.

5 The reprehensibility issue is another -- it's an
6 important issue, and they raised these new issues kind of in
7 their reply, that the emotional distress award includes the
8 punitive damage component. And that, I guess, the
9 substantial -- I don't even know that -- because that word
10 has a certain weight to it, that it therefore cancels out the
11 punitive damage award.

12 Here the damages for emotional distress are very
13 reasonable. And the trial was not bifurcated. The jury knew
14 it had to decide both emotional distress and punitive
15 damages. There was no reason, or logical explanation, as to
16 why the jury would decide to lump together some portion of
17 the punitive component into the emotional distress.

18 The evidence of emotional distress may have been short
19 but it was certainly compelling. My client talked about the
20 loss of her management career after commuting to Sacramento
21 for seven years to get her MBA, and the jury put a very
22 reasonable value on that. She talked also about how she felt
23 continuing to work there when she thought she was going to
24 get the promotion and she did not.

25 Remember, too, of course, that punitive damages are

1 not to compensate the plaintiff, they are to punish and deter
2 conduct such as this that occurred in this case.

3 When you look at cases that talk about a substantial
4 or -- I guess substantial compensatory damages that may
5 already contain a punitive element, those cases, the Simon
6 case, the amount of punitive damages was 340 times the
7 compensatory award, and in State Farm it was 145 times.
8 Those are different standards, and that may raise a suspicion
9 that I don't believe exists in this case.

10 Kelly is also making a claim, I guess, that its
11 reprehensibility is negligible or mitigated as a matter of
12 law because of their so-called legitimate factors, and that
13 goes to the mixed motive issue that he was arguing this
14 morning.

15 That argument doesn't work because they lost the trial
16 because the jury did not buy their reasons. And they have
17 told us over and over again about these reasons, the
18 so-called legitimate business reasons including -- it's at
19 page 5 of their moving brief, again at page 16, that they
20 offered the job to Donna Walker, that Maya Bonhoff made an
21 independent recommendation, that there was management group
22 consensus.

23 I think many of those reasons actually added to
24 Kelly's reprehensibility in this case, because the
25 recommendation from Maya Bonhoff, we put on evidence it was

1 tainted, she didn't really know what was going on, she didn't
2 think Lynn wanted the job. The management group consensus
3 was just a phantom consensus, that never really happened
4 either. I think since the jury did find malice by clear and
5 convincing evidence, surely that should tip the scale in
6 plaintiff's favor on the reprehensibility issue.

7 We have the five factors discussed in BMW versus Gore,
8 which is -- or the BMW case talks about the five factors,
9 that State Farm notes that the absence of any one of these
10 may render an award suspect, but it's not unconstitutional
11 per se, you don't even need all five. If you don't have any
12 of those factors you may still have a constitutional award,
13 it just needs to be looked at on a case-by-case basis. And I
14 don't find those after the fact arguments very persuasive in
15 this context because Kelly had the opportunity to put that
16 evidence in, and the jury didn't agree with them; they found
17 that there was reprehensible conduct.

18 I guess the ratio -- there are the two issues, the
19 ratio and the reprehensible. If I turn now to the ratio
20 issue, I believe that's been briefed fairly comprehensively,
21 but a nine to one ratio is not excessive. It's at the top
22 range, but it's not excessive. It's a single digit
23 multiplier. And, of course, the Court has or will read the
24 State Farm case, which is the controlling case in this area,
25 and in that case it talks about punitive awards exceeding a

1 single digit multiplier to a substantial degree are suspect.
2 Ours isn't even exceeding a single digit multiplier.

3 So, the cases that talk about the two, or three times,
4 four multipliers, some of them -- the Buell case, in that
5 case the compensatory award was already so great that the
6 jury's award of 55 million was the reduced award. The
7 numbers just get -- they get really large if you're looking
8 at the ratio and you have a large compensatory.

9 Our compensatory award is fairly reasonable given what
10 happened. The ratio of the punitive damages to the
11 compensatory is also within constitutional provisions of the
12 due process clause as a single digit multiplier.

13 I hope that -- let's see. The cases that we've
14 discussed, I think those -- there is also the Gelfo case that
15 they cited on the managing agent issue. In that case there
16 was no corporate decision maker involved in the employment
17 decision, so it's insufficient evidence. Here there is
18 evidence on both sides, and I believe it's substantial and
19 it's enough to support the award.

20 If the corporation itself did not have the integrity
21 to continue the investigation and to carry forth the
22 information they learned from '99 into the 2001 time period,
23 that's their fault. And I think that's partly why they're
24 getting called to task for it, because they failed to take
25 steps to prevent what happened to my client, almost as an

1 inevitable result of the prior allowing of the discrimination
2 to flourish in the Nevada City office.

3 I've read Kolstad, it's been a while, so I can't
4 respond on that case. I don't know, it wasn't in their
5 brief, but the -- I think that -- well, I'll just have to
6 leave that for now.

7 Did Your Honor also want to hear about the attorney's
8 fees, or are we going to handle that separately?

9 THE COURT: You can argue that if you want to.

10 MS. JONES: Did you have any other questions on the
11 constitutionality -- I think the managing agent issue is --
12 if you read the cases, we are clearly within the managing
13 agent, those five people that I've identified as corporate
14 officers, who had knowledge of what was going on.
15 Communication with the corporation was definitely taking
16 place.

17 I think we may have even had a claim that William
18 Heinz was a managing officer, but I didn't need that because
19 we have so many corporate agents from the Troy office, the
20 headquarters, that were aware of what was going on and
21 authorized, ratified, that behavior of William Heinz.

22 The attorney's fees, it's basically -- there are
23 many -- under Local Rule 54-293, there are many factors to be
24 considered, including the customary fee in contingency, and I
25 believe we've put on plenty of evidence to establish a

1 reasonable lodestar.

2 The multiplier, that's a little more difficult in
3 federal court, but there is plenty of state law, which is
4 applicable here. The Court does have the discretion to
5 enhance the award. I do not believe the lodestar in our case
6 is excessive. If you look at the number of hours that were
7 spent on this case, it's very modest.

8 And nor are the hourly rates excessive. We have put
9 forth our declarations that say that that's what the market
10 rate should be.

11 There are three federal Court USDC cases cited by
12 defendant in their opposition, all three of those cases dealt
13 with the same disability attorney who would file lawsuits for
14 accommodations against fast food restaurants, and public
15 accommodations, drug stores, things like that, and the Court
16 seems to be in accord that that person's rate should be
17 limited to 250 for that type of work. It's a lot of
18 boilerplate pleadings, they file -- I think he had, like, 40
19 cases going. That's not my rate. That's not how I'm
20 working. So there is a lot of discretion in the award of the
21 fees, and I believe we've briefed that pretty fairly
22 comprehensively as well.

23 THE COURT: Okay.

24 MS. JONES: Thank you.

25 MR. CONNAUGHTON: Thanks, Your Honor. I'll just make

1 a couple of follow-up points.

2 Number one, it sounds like now the issue in response
3 to your question about what the approval or ratification was
4 now is that there were people at corporate who were involved
5 in the promotion decision. I think that was the -- and I
6 believe that's belied by the record.

7 The record showed, and all of the testimony before
8 this jury was, that Mr. Heinz made the decision, in
9 consensus, if you believe him, with the people below him.
10 There was not evidence that people at -- somewhere at
11 corporate, certainly a managing agent, that made this
12 decision with him. And that is another reason that shows why
13 this managing agent 3294 issue is so crucial.

14 It's not sufficient to just say Kelly corporate did
15 this, or these officers did that. There needs to be
16 admissible, clear and convincing evidence of actual knowledge
17 by someone who could set corporate policy. And there just
18 isn't that evidence before this jury, with the possible
19 exception of Ms. Ramsey, and the evidence as to what she did
20 shows absolutely no approval, absolutely no ratification, and
21 for that matter, and because of that, punitive damages, I
22 think, are inappropriate as a matter of law.

23 As to the follow-on issue regarding whether the
24 verdict was substantial, the judgment amount was substantial
25 or not, it's -- for the same exact theory, under the parallel

1 state and federal law, the amount is double the capped amount
2 if this were just a federal claim, same standards, same
3 everything else. So I don't think there is a reasonable
4 argument that it wasn't a substantial verdict, because were
5 we just doing this under federal law it would be halved, just
6 the compensatory, as a matter of law.

7 Leaving that and just going to the attorney's fees
8 issue, the multiplier would be a windfall as a matter of law.
9 The standard rate in this district under all of the published
10 cases for experienced trial counsel is \$250 an hour. And I'd
11 also respectfully submit that the documentation submitted in
12 order to support the numbers is insufficient as a matter of
13 law, but that is obviously an issue for Your Honor's
14 discretion.

15 Thank you for your patience, Your Honor.

16 MS. JONES: Just one more comment.

17 It is -- at the very, very least Nina Ramsey knew
18 about the discriminatory treatment when Lynn told her. And
19 that was prior to filing any charges or any -- although the
20 promotion had already taken place, it was wrong, and she was
21 aware, she had been told that it was wrong.

22 I think there are still plenty of other officers that
23 were aware of what was going on. Theresa Dolbert, Darrah
24 Bixler was the one who knew the most about what was
25 happening, and I think even as a human resources generalist

1 she had the ability to go back to her boss at headquarters
2 and influence corporate policy. Notwithstanding defense
3 counsel's suggestions that she had no such power, there was
4 testimony that she counselled William Heinz on his job
5 employment decisions, that she -- she was involved. She was
6 the corporate liaison person who had the ability.

7 You've got a big separation of -- you know, between
8 Troy and California, and the communications were not all that
9 common, but certainly in this case we have a number of
10 contacts with the corporation dealing with this issue of
11 discrimination prior to my client not getting the promotion,
12 and then after. So there is -- there are five corporate
13 officers at the very least.

14 Thank you.

15 THE COURT: The matter is submitted.

16 MR. CONNAUGHTON: Thank you, Your Honor.

17 (Court adjourned, 9:37 a.m.)

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REPORTER'S CERTIFICATE

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STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO)

I, KIMBERLY M. BENNETT, certify that I was the Official Court Reporter, and that I reported verbatim in shorthand writing the foregoing proceedings; that I thereafter caused my shorthand writing to be reduced to typewriting, and the foregoing pages constitute a complete, true, and correct record of said proceedings:

COURT: U.S. District Court

Eastern District of California

JUDGE: Honorable GARLAND E. BURRELL, JR., Judge

CASE: LYNN NOYES vs. KELLY SERVICES, INC.

DATE: JUNE 16, 2008

IN WITNESS WHEREOF, I have subscribed this certificate at
Sacramento, California.

/s/ Kimberly M. Bennett

KIMBERLY M. BENNETT

CSR No. 8953, RPR, CRR, RMR